(1)

Supreme Court, U.S.
FILED

961791 MAY 5 1997

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1997

GENE FLINN,

Petitioner,

v.

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation, JOHN DOES, as indicted and unindicted confederates/co-conspirators, JANE DOES, as indicted and unindicted confederates/co-conspirators, and PRUDENTIAL-BACHE SECURITIES, INC.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

GENE FLINN
In Proper Person
5100 SW 87 Avenue
Miami, Florida 33165
(305) 274-0033

May 7, 1997

23 pp

QUESTIONS PRESENTED

The following are constitutional infringements of Petitioner's rights; and jurisdictional:

1. The state authorities' failure to defend Petitioner or the EEOC in taking affirmative action, via filing of a lawsuit and/or pursuing federal indictments, as here, based upon the Branch EEOC Supervisor's affidavit evidencing that the thereafter State indicted Aide occurring solely upon Petitioner's testimony, e.g. Shields was not an Oxford University educated teacher and the accomplice only stopped by this Agency when the office was closing explaining they were in a hurry to see a newspaper reporter; never filing or returning to any U.S. office in perfecting of a complaint for charges against Petitioner.

2. The termed RICO Statement with factual recitals of a protective series of predicate acts by a group of individuals listed as John Does initially directing operations through corporate affiliates and subsidiary retained counsel engaged in racketeering are civilly liable.

3. A State officer constitutionally authorized to conduct a subpoenaed investigation which, here, correspondingly factors into Federal Criminal Code violations leading to National consequences should

be found immune from targeted complaints of alleged personal misconduct publicized while officiating in office.

4. The unwarranted privacy intrusions exhibited in print 'excesses' committed by newspaper chains are violative though media perceived to be authoritatively based.

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TABLE OF AUTHORITIES
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RELEVANT TO THE ARGUMENT:

CASES:

GENE FLINN, ESQ., v. DEXTER LEHTINEN, ESQ., as U. S. Attorney for the Southern District of Florida, 28 U.S.C. §546, for ouster, 90-1331-CIV (1990). [Federal]

GENE FLINN, ESQ. v. ESM GOVERNMENT SECURITIES, INC., 84-0014-CIV (1984) [Federal]

THE FLORIDA LAWYERS MUTUAL INSURANCE COMPANY (a Florida Bar/I.R.C. §501(c) funded affiliate for political agendas) vs. GENE FLINN, ESQ., 90-06572 (1990) [A Florida State Court].

PRUDENTIAL PROPERTY AND CASUALTY COMPANY ('Group') v. GENE FLINN, ESQ., 83-1852-CIV (1983) [Federal]

THE SECURITIES & EXCHANGE COMMISSION in the matter of Securities Transactions at ESM GOVERNMENT SECURITIES, INC. and AFFILIATES, [initially designated as A-1100] 645 F.2d 310 (5th Cir. 1981)

STATE GRIEVANCE COMPLAINTS - Filed against "FLINN", Petitioner, for disbarring

A. Stuart Z. Grossman, Member Florida Bar Board of Governors; counselor in Florida Lawyers Mutual Insurance Company case in litigation currently with Petitioner, as against Gene Flinn, Esq., 1991.

B. Arthur I. Jaccbs, Florida Lobbyist under contract to The Florida Bar, as against Gene Flinn, Esq., 1987/88; 1991.

C. The Plummer Brothers, as a Florida State Senator and the other, a City of Miami Commissioner targeted in 1996/97 U. S. 'Greenpalm' investigation, as against Gene Flinn in 1987/88; 1991.

WASHINGTON, D. C. and FEDERAL COURT GRIEVANCE COMPLAINTS - Filed by "Flinn", Petitioner; Division Associates

A. Gene Flinn as against Dexter Lehtinen reciting 'Hobbs'; protecting the South American Cartels running drugs here. Southern District of Florida,

1990. Lehtinen resigned under dismissal threat by Attorney General Barr in 1992.

B. Gene Flinn as against James Robert Gailey, Federal Public Defender, Southern District of Florida, filed with the Eleventh Circuit reciting Income Tax Evasion, 1993. Gailey was fired by Circuit's Chief Judge, May, 1994.

C. Gene Flinn as against the 28 U.S.C. §133 nominated Theodore Klein filed with the U. S. Senate Judiciary Committee re CenTrust (1992). Klein withdrew name, 1994.

D. Gene Flinn as against the 28 U.S.C. §133 nominee Bruce W. Greer (1993), which extensive scenario is a case (1) acknowledged by Bruce R. Lindsey in letter of July 26, 1994 delaying the President's submittal of name to the U. S. Senate Judiciary Committee; (2) objections in re White Collar endeavors was acknowledged in correspondence received from U. S. Senator Orrin Hatch, Chair, the last dated January 31, 1996. Greer withdrew name, 1996. For briefing: The Florida Bar and The Miami Herald (editorially) supported their attorney's selection/nomination. The Wall Street Journal sides with Petitioner upon receipt of his federal investigative material and editorially opposes the nomination in an article dated February 8, 1996, page A14. As a consequence,

Petitioner's repeated applications for retroactive readmission to the Florida Supreme Court based upon evidence of disclosed White Collar racketeering are opposed by The Florida Bar; and all denied, which affects his federal standings and governmental court practice.

The Petitioner prays that a Writ of Certiorari issue to review the Court of Appeals for the Eleventh Circuit entered orders republished here, including the one refusing Petitioner's emergency request for subpoenas which possibly could have saved the life of an effective drug informant.

OPINIONS BELOW

Opinions of the Court of Appeals for the Eleventh Circuit Court together with a relevant newspaper 'clip' are reprinted in the Appendix.

JURISDICTION

The jurisdictional requirements for this Court's review are met through issues being both constitutional and conflict between the Circuits' in presented questions.

This Petition is filed pursuant to the provisions set forth in 28 U.S.C. 2101(c) and (d), and is filed within the time allotted by the Court through an Enlargement of Time.

STATEMENT OF THE CASE

As apropos to the accusations currently directed to Rep Dan Burton, Chair, Rep. Gene Flinn, as Chair of the Securities Transactions Committee, organizes to investigate the Prudential Securities violations[1]. In this analogous circumstance the events unfolding were (1) a Herald breaking news expose' that Petitioner was facing EEOC charges of sexual harassment; (2) a Florida Bar release that he was facing Probable Cause for ethical misdeeds, and (3) being the recipient of a Reservation of Rights letter from Prudential written on his law firm. He is (a) reprimanded by the Florida House, (b) loses a State reelection bid, and (c) his state license. Contemporanecus to the State Disbarment, Petitioner is found to be in compliance with the Southern District Court's issued Rule upon racketeering evidence submitted at hearing; continues U. S. practice, except for Eleventh Circuit civil appeals, where disbarred.

---

1. Petitioner was federal 'strike force' authorized, e.g. Contrast the beleaguered SEC v. (the politically powerful) ESM, (1981) [probe written off as 'stale'; losing] to the pursuing Flinn v. The (fraudulent) ESM, [with subpoenas collapsed ESM totally by mid 1985; penal/suicides followed]. See, Petitioner's newspaper law enforcement reference in cocaine trafficker's conviction, 1997, in Appendix, losing but one (1) informant.

The Respondent, however, and winning, continues to defraud 8,000 policyholders/investors nationwide settling each surfacing brokers case with the SEC, in blocking all threats of any other state oversight inquiry which Flinn was conducting together with staff ccunsel.

In the fallout, the female accuser, represented by Flinn's Run-off opponent whose firm was counsel to Prudential, is indicted and 'ccps a plea' to perjury, and the House attorneys direct shredding of its 'working papers' during litigation with Petitioner for seventeen (17) years. Though the Bar's charges were temporarily suspended, the grievances were revived in 1987/88 in the wake of Petitioner's participation in U.S. Senate confirmation fights over two (2) of this Court's nominees, and Petitioner, trial certified acting Pro Se, wins reinstatement of PRU coverage after four (4) years through a District Court rendered Judgment in which the State hired Aide is recited by name in the verdict. Refer, Prudential Property and Casualty Company (Group) v. Gene Flinn, No. 83-1352 - CIV[2].

2. The 'Pru' soon abandoned its perfected appeal to frustrate threatened Certiorari.

ARGUMENT

Petitioner was an elected constitutional officer by virtue of the powers reserved to the states. While clothed and acting pursuant to this authority, the Respondent is investigatively targeted for securities fraud which reactively is quashed through Respondents' lobbyists. This tracks the pattern of averred to bribery allegations presented in the case of H. J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 106 L.Ed.2 195, 109 S.Ct. 2893 (1989), which court rejections were crouched in the identical terms of 'cannot prove'. The scenarios listed, here, captioned Relevant Matters are provable. Moreover, the Respondents engaged Petitioner in more than two (2) predicate act occasions, including that of placing its member on the grievance panel trying Petitioner to protect its future economic interests through perpetrating a disbarment of Petitioner, as the probing Chair in his never returning to public office. Compare, The Florida Bar v. Gene Flinn, 575 So.2d 634 (Fla. 1991), date followed by the Circuit notwithstanding its District Court ruling to the contrary, where a Federal practitioner who, while acting officially in exposing criminal activity, is state disbarred with statements adduced from Respondents' lobbyist to that of the Illinois case styled In Re James H. Himmel, 533 N.E.2d 790 (Ill. 1988), where a State practitioner who acted to secrete evidence of criminal activity is merely

suspended. Consequently, there exists presently a jurisdictional disparity as between these two (2) Circuits in conflict on a matter of (a) what is acceptable Public Policy for protection of public officials and (b) what constitutes the standard to be uniformly applied regarding Ethics.

CONCLUSION

On the eve of every press monitored event of history in the making, a trotted out accuser is exhibited and though lacking portfolio appears on the front pages, such as a Karen Shields, or an Anita Hill, or a Paula Jones, or a Mark Seigel, avowedly there for the surreptitious purpose of subverting the constitutionally mandated process ... and thereafter no matter the interloper is discredited, and after the ruckus, the damage is done via this media circus, is irreversible, and is repeated in background stories about the once attacked office holder, even though the individual is found to be innocent of all such accusations.

As discovered, upon Respondent submitted to Petitioner's deposition, the opposing Counsel (Soto) law firm had positioned a member on the State Bar's Grievance Committee in 1987/88 trying Petitioner to vote out the disbarment.

It is submitted this the 7 day of May, 1997.

GENE FLINN, PETITIONER
5100 SW 87 Avenue (Galloway Road)
Miami, Florida 33165
(305) 274-0033

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-4854
Non-Argument Calendar

D. C. Docket No. 94-10031-CIV

GENE FLINN,

Plaintiff-Appellant,

versus

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation, JOHN VARIOUS JOHN [sic] DOES, as indicated [sic] and unindicated [sic] confederates/co-conspirators, JANE DOES, as indicated [sic] and unindicated [sic] confederates/ co-conspirators, PRUDENTIAL-BACHE SECURITIES, INCORPORATED, PRUDENTIAL PROPERTY & CASUALTY INSURANCE CO. [sic],

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Florida

Before, KRAVITCH, EDMONDSON and COX, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for

the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Entered: August 23, 1996
For the Court: Miguel J. Cortez, Clerk

By: "s/ Matt Davidson "
Deputy Clerk

ISSUED AS MANDATE: 1/8/97

APPENDIX B

DO NOT PUBLISH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-4854
Non-Argument Calendar

D. C. Docket No. 94-100031-CIV-JCP

GENE FLINN,

Plaintiff-Appellant,

versus

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation, JOHN VARIOUS JOHN [sic] DOES, as indicated [sic] and unindicated [sic] confederates/co-conspirators, JANE DOES, as indicated [sic] and unindicated [sic] confederates/ co-conspirators, PRUDENTIAL-BACHE SECURITIES, INCORPORATED, PRUDENTIAL PROPERTY & CASUALTY INSURANCE CO. [sic],

Defendants-Appellees.

On Appeal from the United States
District Court for the Southern
District of Florida

(August 23, 1996)

Before, KRAVITCH, EDMONDSON and COX, Circuit Judges.

PER CURIAM:

Flinn filed a pro se RICO and civil rights complaint seeking damages against Prudential Property and Casualty Insurance Company ("Prudential Property") and yet to be identified "John Does and Jane Does, as indicted and indicted (sic) confederates/co-conspirators." (sic) Later, Flinn filed a RICO statement, along with a seven-count amended complaint seeking damages and injunctive relief and naming Prudential Property and Prudential Bache Securities, Inc., a/k/a/ Prudential Securities, Incorporated ("Prudential Securities") as defendants.

Each defendant filed a motion to dismiss the amended complaint, arguing, inter alia, that Flinn (1) fails to state a cause of action under either §§ 1981 and 1983 because he failed to allege racial discrimination or a violation of his civil rights "under color of state law"; (2) failed to state with particularity a claim for fraud; (3) failed to state a RICO claim because he never alleged sufficient facts to show that the defendants derived any income directly or indirectly from Flinn, that the defendants collected an unlawful debt from Flinn, that a relationship existed between the defendants through a pattern of racketeering, and that the purpose of the purported "enterprise: was to obstruct justice and destroy Flinn's character through disbarment; and (4) failed to allege sufficient facts that the defendants conspired to commit two or more predicate RICO acts against

Flinn.

The district court dismissed with prejudice the amended complaint against the defendants, holding that both the amended complaint and the RICO statement were unintelligible and, therefore, insufficient to state a legal entitlement for relief. The court further concluded that the defendants' motions to dismiss raised various meritorious defenses.

The court then denied Flinn's motion for reconsideration of its order dismissing the action as to Prudential Property. Thereafter, Flinn filed a document entitled "Motions on Rehearing of Order," (sic) in which Flinn moved the district court to set aside its order of dismissal. The district court denied this motion. This appeal followed.

Although Flinn's amended complaint and RICO statement are replete with conclusory allegations of wrongdoing by the defendants, he fails to allege sufficient facts that identify the defendants' conduct, the nature of the enterprise, or any pattern of racketeering activity by the defendants. He further does not provide any specific facts as to the alleged RICO conspiracy entered into by the defendants.

The fraud claims are, at best, replete with conclusory allegations that fail to provide adequate notice to the defendants of any fraud claims against them. See Fed.R.Civ.P. 8. About the damage to reputation claims, they are replete with conclusory

allegations that fail to provide adequate notice to the defendants of any cognizable claim against them.

For the Civil Rights claim under § 1981 other than citing this statute in his amended complaint Finn has failed to allege facts indicating that the defendants subjected Flinn to any racial or ethnic discrimination. On the Civil Rights claim under § 1983, Flinn has failed to allege any facts indicating that the defendants, who are private companies, were state actors.

AFFIRMED.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-4854

GENE FLINN,

Plaintiff-Appellant,

versus

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation, JOHN VARIOUS JOHN [sic] DOES, as indicated [sic] and unindicated [sic] confederates/ co-conspiritors [sic], JANE DOES, as indicated [sic] and unindicated [sic] confederates/co-conspirtors [sic], PRUDENTIAL-BACHE SECURITIES, INCORPORATED, PRUDENTIAL PROPERTY & CASUALTY INSURANCE CO. [sic],

Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Florida

Before, KRAVITCH, EDMONDSON and COX, Circuit Judges.

The petition(s) for rehearing filed by the appellant, Gene Flinn, is denied.

ENTERED FOR THE COURT:
"s/ J. L.Edmonson "
UNITED STATES CIRCUIT JUDGE

Filed: December 30, 1995.

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 91-2030

In the Matter of

GENE FLINN

ORDER:

Mr. Flinn's "mction to Accept Untimely Motion for Rehearing" received April 25, 1991, in GRANTED.

Mr. Flinn's "Motion to Supplement the Record with Additional documentation: received May 6, 1991, is GRANTED.

Mr. Flinn's "Emergency Motion for Issuance of Federal Subpoenas" received June 18, 1991, and "Notice of Filing and Renewed Request Subpoenas or, in the Alternative, Hearing" received October 4, 1991, are DENIED.

"s/Gerald Bard Tjoflat"
Chief Judge

FILED: October 12, 1994
Miguel J. Cortez, Clerk

APPENDIX E

EXCERPT

THE ISLAMORADA FREE PRESS
bylined April 2, 1997, Page 9, styled
"Tavernier man sentenced for cocaine"

Petitioner's quote appearing in Article:

> " Former Florida State Representative from Tavernier, Gene Flinn told the Free Press he was aware that law enforcement officers had Krebs under surveillance for some time.
>
> It payed (sic) off with his conviction and sentence," Flinn said, "and should put drug traffickers on notice and send a message to Washington that something is being done about the drug problems that still exists in South Florida.
>
> Krebs could have received a maximum sentence of 30 years."

Supreme Court, U.S.
FILED
JUN 17 1997
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(2)

No. 96-1791

In The

Supreme Court of the United States

October Term, 1996

GENE FLINN,

Petitioner,

vs.

PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign corporation, JOHN DOES, as indicted and unindicted confederates/co-conspirators, JANE DOES, as indicted and unindicted confederates/co-conspirators, and PRUDENTIAL-BACHE SECURITIES, INC.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT PRUDENTIAL SECURITIES INCORPORATED'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

SARA SOTO
Counsel of Record for Respondent Prudential Securities Incorporated
FOWLER, WHITE, BURNETT, HURLEY, BANICK & STRICKROOT, P.A.
International Place, 17th Floor
100 S. E. Second Street
Miami, Florida 33131
(305) 789-9200

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

6 pp

LIST OF PARENT COMPANIES AND KNOWN WHOLLY-OWNED SUBSIDIARIES

Prudential Insurance Company of America,
Parent Company of Prudential Securities Incorporated

STATEMENT OF THE CASE

Petitioner Gene Flinn ("Flinn") filed a *pro se* RICO and civil rights complaint seeking damages against Prudential Property and Casualty Insurance Company ("Prudential Property") and yet-to-be identified "John Does and Jane Does." (Appendix B, p. 10). Thereafter, Flinn filed a seven-count amended complaint seeking damages and injunctive relief and adding Prudential Securities Incorporated ("PSI") as a defendant. (Appendix B, p. 10).

The United States District Court for the Southern District of Florida granted PSI's motion to dismiss Flinn's amended complaint with prejudice, holding that both the amended complaint, and a RICO statement filed by Flinn, were unintelligible and, therefore, insufficient to state a legal entitlement to relief. (Appendix B, p. 11) The District Court further concluded that PSI's motion to dismiss raised meritorious defenses. (Appendix B, p. 11) The District Court denied Flinn's motions for rehearing, and Flinn appealed to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit held:

> Although Flinn's amended complaint and RICO statements are replete with conclusory allegations of wrongdoing by the defendants, he fails to allege sufficient facts that identify the defendants' conduct, the nature of the enterprise, or any pattern of racketeering activity by the defendants. He further does not provide any specific facts as to the alleged RICO conspiracy entered into by the defendants.
>
> The fraud claims are, at best, replete with conclusory allegations that fail to provide adequate notice to the defendants of any fraud

> claims against them. *See* Fed.R.Civ.P. 8. About the damage to reputation claims, they are replete with conclusory allegations that fail to provide adequate notice to defendants of any cognizable claim against them.
>
> For the civil rights claim under § 1981 other than citing the statute in his amended complaint Flinn has failed to allege facts indicating that the defendants subjected Flinn to any racial or ethnic discrimination. On the civil rights claim under § 1983, Flinn has failed to allege any facts indicating that the defendants, who are private companies, were state actors. (Appendix B at p. 11-12)

The Eleventh Circuit, therefore, affirmed the District Court's Order dismissing Flinn's amended complaint, and denied Flinn's motion for rehearing. (Appendix C, p. 13)

Flinn thereafter filed his petition for a writ of certiorari.

ARGUMENT

Flinn's petition fails to demonstrate any basis for issuance of a writ of certiorari. The petition does not show: (1) that the Eleventh Circuit has entered a decision in conflict with the decision of another United States Court of Appeals in the same important matter; or, (2) that the Eleventh Circuit has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or, (3) that the Eleventh Circuit has so far departed from the accepted and usual course of

judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory powers; or, (4) that the Eleventh Circuit has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. These are the reasons this Court generally considers in granting a petition for a writ of certiorari, *see* Supreme Court Rule 10, and Flinn's petition presents none of them. Instead, Flinn's petition brings before this Court the same type of unintelligible, conclusory and irrelevant accusations which he previously visited upon the District Court and the Eleventh Circuit Court.

As a review of the Eleventh Circuit's decision demonstrates, and contrary to statements in the petition, Flinn's amended complaint contained no allegations against PSI similar to those presented in the case of *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989). The Eleventh Circuit did not cite *H.J. Inc.* in its decision below, and made no statements of law in its decision which in any way conflict with or depart from this Court's rulings in *H.J. Inc.* Similarly, Flinn's petition does not correctly describe the facts or holding in either *The Florida Bar v. Gene Flinn*, 575 So. 2d 634 (Fla. 1991) or *In re James H. Himmel*, 533 N.E. 2d 790 (Ill. 1988).

As this Court has indicated in Supreme Court Rule 10, "a petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Even from that perspective, Flinn's petition fails to

direct this Court to any erroneous factual finding or any misapplication of a properly stated rule of law.

PSI respectfully submits that there is simply no basis for issuance of a writ of certiorari in this case.

Finally, in accordance with Supreme Court Rule 15.2, PSI also advises the Court that:

(a) Flinn did not take PSI's deposition in this case, and the statement to the contrary at page six of Flinn's petition is therefore inaccurate.

(b) Flinn's amended complaint did not allege that PSI had placed "its member on the grievance panel trying Petitioner to protect its future economic interests through perpetrating a disbarment of Petitioner".

CONCLUSION

For the reasons and authorities cited, PSI respectfully submits that Flinn's petition for a writ of certiorari should be denied.

Respectfully submitted,

SARA SOTO
Counsel of Record for Respondent
Prudential Securities Incorporated
FOWLER, WHITE, BURNETT, HURLEY,
BANICK & STRICKROOT, P.A.
International Place, 17th Floor
100 S. E. Second Street
Miami, Florida 33131
(305) 789-9200